

**STORAGE:**

This section is revised to read as follows: Appropriate accounting data is stored in electronic media and paper form (e.g., purchase orders, memoranda, subsidiary ledgers, invoices, and other miscellaneous records).

**RETRIEVABILITY:**

This section is revised to read as follows: These records are retrieved by the individual's name or social security number.

**RETENTION AND DISPOSAL:**

This section is revised to read as follows: The records are maintained and disposed of in accordance with the General Services Administration, *General Records Schedule 6, 7, 9, and 20*.

**RECORD SOURCE CATEGORIES:**

This section is revised to read as follows: The sources for the records are purchase orders, vouchers, invoices, contracts, and electronic records (e.g., Travel Manager, Frequent Travel Solutions, Inc.) or other paper records submitted by employees, vendors, and other sources, including claims filed by witnesses in SEC actions.

SEC-29 is amended as follows:

**SEC-29****RETENTION AND DISPOSAL:**

*Subsystem A:* This section is revised to read: Paper records are retained in-house for two (2) years from the office's date of receipt of the complaint/inquiry then transferred to the Federal Records Center for storage. Records sent to the Federal Records Center that *do not* relate to law enforcement matters are maintained for two (2) additional years (for a total of four (4) years from the office's date of receipt). Paper records that *do* relate to an enforcement matter are maintained for an additional four (4) years at the Federal Records Center for a total of six (6) years from the office's date of receipt.

*Subsystem B:* This section is revised to read: Paper records are maintained in-house upon expiration of the Chairman's tenure in office. In accordance with 17 CFR 200.80f, certain files are forwarded to the Federal Records Center or transferred to the National Archives and Records Administration.

*Subsystem C:* This section is revised to read: Paper records are maintained in-house for six months from the office's date of receipt and destroyed periodically thereafter.

*Subsystem D:* This section is revised to read: A computerized record of searches and transactions is maintained

in an on-line database and on data cartridges. Electronic records are maintained indefinitely. Database files are saved on the cartridges, which are sent to the Commission's off-site storage vendor.

Dated: March 5, 1998.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39712; File Nos. SR-CBOE-97-68; SR-MSRB-98-02; SR-NASD-98-03; and SR-NYSE-97-33]

### Self-Regulatory Organizations; Order Approving Proposed Rule Changes by the Chicago Board Options Exchange, Municipal Securities Rulemaking Board, National Association of Securities Dealers, Inc., and New York Stock Exchange, Inc. Relating to Continuing Education Requirements

March 3, 1998.

#### I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> on December 30, 1997, January 21, 1998, January 22, 1998, and December 8, 1997, the Chicago Board Options Exchange ("CBOE"), Municipal Securities Rulemaking Board ("MSRB"), National Association of Securities Dealers, Inc. ("NASD"), and New York Stock Exchange, Inc. ("NYSE"), respectively, submitted to the Securities and Exchange Commission ("Commission") proposed rule changes modifying the continuing education requirements of registered persons.<sup>3</sup> The proposed rule changes were published for comment in the **Federal Register** on January 29, 1998.<sup>4</sup> The Commission received five

<sup>1</sup> 15 U.S.C. § 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The NYSE, CBOE, and MSRB submitted technical amendments to the proposed rule language. See letter from James E. Buck, Senior Vice President, NYSE, to Gail Marshall, Special Counsel, Division of Market Regulation, SEC, dated February 10, 1998; letter from Lawrence J. Bresnahan, Assistant Vice President, Department of Financial and Sales Practice Compliance, CBOE, to Gail Marshall, SEC, dated January 23, 1998; and letter from Ronald W. Smith, Senior Legal Associate, MSRB, to Katherine A. England, Assistant Director, SEC, dated January 21, 1998. The CBOE and MSRB proposed rule language, as amended, is virtually identical to that of the NYSE, which was published in Securities Exchange Act Release No. 39577 (January 23, 1998), 63 FR 4513 (January 29, 1998).

<sup>4</sup> See Securities Exchange Act Release Nos. 39574 (January 23, 1998), 63 FR 4510 (January 29, 1998)

comment letters regarding expanding the continuing education program. For the reasons discussed below, the Commission is approving the proposed rule changes.

#### II. Background

The Securities Industry/Regulatory Council on Continuing Education ("CE Council") was created in November 1993 and is comprised of six self-regulatory organizations ("SROs") and thirteen broker-dealers to represent the interests and needs of a wide cross-section of the industry. The SROs include the American Stock Exchange;<sup>5</sup> CBOE; MSRB; NASD; NYSE; and the Philadelphia Stock Exchange.<sup>6</sup> The CE Council facilitates the industry/regulatory coordination of the administration and future development of the Continuing Education ("CE") Program. The Council, on October 17, 1997, announced that it was recommending changes to the CE Program to strengthen the requirements for registered persons<sup>7</sup> and implement a new program specifically for industry managers and supervisors.

The CE Program, which is uniform within the industry, consists of two parts, a Regulatory Element and a Firm Element.

##### A. The Regulatory Element

The Regulatory Element requires registered persons to participate in interactive computer-based training at specified intervals and encompasses regulatory and compliance issues, sales practice concerns, and business ethics. The Regulatory Element program

(SR-NASD-98-03); 39575 (January 23, 1998), 63 FR 4507 (January 29, 1998) (SR-CBOE-97-68); 39576 (January 23, 1998), 63 FR 4509 (January 29, 1998) (SR-MSRB-98-02); and 39577 (January 23, 1998), 63 FR 4513 (January 29, 1998) (SR-NYSE-97-33).

<sup>5</sup> The American Stock Exchange, Inc. ("Amex") has also filed with the Commission a proposed rule change to modify its rules regarding the continuing education of registered persons. That rule proposal is duplicative of the rule proposals being approved today. Accordingly, the Commission, in a separate order, is approving, on an accelerated basis, the Amex's proposed rule change. See Securities Exchange Act Release No. 39711 (March 3, 1998).

<sup>6</sup> In addition, the Commission and the North American Securities Administrators Association each have liaisons assigned to the Council.

<sup>7</sup> For purposes of the proposed rules, the term "registered person" means any person required to be registered under the rules of the applicable SRO, including members and registered representatives, but does not include any person whose activities are limited solely to the transaction of business on the floor of a national securities exchange with members or registered broker-dealers. When used with reference to the MSRB, however, the term "registered person" means any person registered with the appropriate enforcement authority as a municipal securities representative, municipal securities principal, municipal securities sales principal, or financial and operation principal pursuant to MSRB Rule G-3.

applies generally to all registered persons and currently does not distinguish among registration types or categories. The existing program contains content common to registered representatives, supervisors, and other registration categories. The CBOE, MSRB, NASD, and NYSE have proposed rule changes for the development of a new program component specifically for supervisors. In addition, it is contemplated that in the future, specific programs may be implemented for other registration categories (e.g., Series 6; investment company products/variable contracts limited representative). The proposed rule changes allow the SROs to require new programs as appropriate with customized training for various registration categories, with the supervisor's program being the first initiative.

The proposed amendments also address the time frames at which registered persons must participate in the Regulatory Element computer-based training. Currently, the SROs' rules require registered persons to complete the training on three occasions, i.e., their second, fifth and tenth registration anniversaries. After a person is registered for more than ten years, he or she graduates from the program and is not required to participate further in the Regulatory Element. However, if at any time a registered person is subject to certain disciplinary actions, then the registered person is required to re-enter the Regulatory Element program. The SROs have proposed to require ongoing participation in the Regulatory Element throughout a registered person's career, specifically, on the second registration anniversary and every three years thereafter, with no graduation from the program.

The SROs, however, have proposed a one-time exemption for persons currently graduated from the program by providing that those persons who have been registered for more than ten years as of the effective date of the proposed rule, and who have not been the subject of a disciplinary action during the past ten years, would continue to be excluded from the required ongoing participation in the Regulatory Element. Persons registered in a supervisory capacity would have to have been registered in a supervisory capacity for more than 10 years in order to be covered by this one-time provision for graduation from participation in the program. Therefore, those supervisors who have graduated from the program requirements based on their initial registration date but who have not completed 10 years as a supervisor

would be required to re-enter the program.

### B. The Firm Element

The Firm Element requires that each member conduct annually an analysis of their training needs and administer such training, as is appropriate, to their registered persons who have direct contact with customers and the immediate supervisors of such registered persons, on an ongoing basis. Topics must be specifically related to their business, such as new products, sales practices, risk disclosure, and new regulatory requirements and concerns. The proposed rule changes require members to also focus specifically on supervisory training needs in conducting their analysis of training needs, and if it is determined that there is a specific need for supervisory training, it must be addressed in the Firm Element training plan.

### III. Comments Received

The Commission received five comment letters on the proposal to expand the CE Program.<sup>8</sup> Three of the five commenters were concerned that the CE Program has not been in existence long enough to determine that it should be expanded upon.<sup>9</sup> Since its inception on July 1, 1995, more than 225,000 registered persons have participated in the Regulatory Element. The NASD provides the CE Council with statistical performance reports on how these registered persons do on the training.<sup>10</sup> These reports provide the CE Council with data on how different registrations (i.e. Series 7, Series 6, Principal, and other) perform on each of the training subject areas (i.e.,

communications with the public, suitability, handling customer accounts, and business conduct). The Commission believes that three years of statistical information provides the CE Council and the SROs sufficient information to make a determination that changes to the Program would be beneficial to the industry. Moreover, the Commission believes the SROs have an obligation to apply the information from these performance reports in their oversight of the CE Program. The Commission, therefore, believes it is appropriate for the SROs to determine that the "one size fits all approach" is not the most effective training method and to begin establishing specialized training based upon a person's registration (e.g., Series 7, Series 6, or Principal).<sup>11</sup>

The Regulatory Element computer-based training is administered by the Sylvan Learning Systems ("Sylvan"). Two commenters expressed concern that the Regulatory Element program was being expanded without regard for the existing problems with Sylvan regarding scheduling and accessing the training sessions. The NASD acknowledged that in September of 1997 there were problems in downloading the training sessions to Sylvan.<sup>12</sup> The NASD has since implemented improvements to its systems to eliminate large-scale download problems and will continue to isolate and correct any random download problems.<sup>13</sup> Moreover, Sylvan has implemented software and procedural changes to the appointment scheduling process to make it more efficient.<sup>14</sup>

One commenter was concerned that the lack of an ongoing graduation provision would significantly increase the costs associated with training a registered employee.<sup>15</sup> While the Commission is sympathetic to the additional costs of the continued training of registered employees, the Commission, however, believes the additional costs is worth both the

<sup>8</sup> Although the rule proposals were virtually identical for each SRO, the comment letters referred particularly to File No. SR-NASD-98-03. See letter from Deborah A. Barragan, Compliance Officer, Chase Securities Inc., to Margaret H. McFarland, Deputy Secretary, SEC dated February 18, 1998 ("Chase Letter"); letter from Lisa Clifford, Compliance Officer, Training & Education, Jefferson Pilot Financial, to Secretary, SEC, dated February 19, 1998 ("Jefferson Pilot Letter"); letter from Kevin Devereaux, Vice President, Deputy Director Compliance, BancBoston Securities Inc., to Office of the Secretary, SEC, dated February 12, 1998 ("BancBoston Letter"); letter from Erwin J. Dugas, Jr., Compliance Manager, Nationwide Investment Services Corporation, to Secretary, SEC, dated February 13, 1998 ("Nationwide Letter"); and letter from Chuck Thompson, Summit Financial Concepts, Inc., to Gail Marshall, SEC, dated February 26, 1998 ("Summit Letter").

<sup>9</sup> See Chase Letter; Jefferson Pilot Letter; and BancBoston Letter.

<sup>10</sup> The NASD also sends a performance report to each firm showing the firm the industry average and the firm score, which is how well the different types of registered employees of the firm performed on the training. The rules of the SROs require the firms to review this feedback in the ongoing analysis of their training needs for the Firm Element.

<sup>11</sup> One commenter noted that their registered employees found the Regulatory Element too oriented to the Series 7 representatives. See Chase Letter. The Commission believes that this specialized program for Principals is the first step in establishing a Regulatory Element training program that is more specialized and therefore more effective.

<sup>12</sup> See letter from Mary L. Schapiro, President, NASD Regulation, to Member Firms, dated October 3, 1997.

<sup>13</sup> See letter from Mary L. Schapiro, President, NASD Regulation, to Member Firms, dated January 20, 1998.

<sup>14</sup> Id.

<sup>15</sup> See Nationwide Letter. Nationwide estimated that it would cost \$525.00 to send an employee to the Regulatory Element training over a period of 20 years.

benefit to investors and to the industry of having registered persons regularly trained in regulatory and ethical standards.

One commenter questioned whether the new CE training for Principals would be appropriate for a registered Principal that had no supervisory duties.<sup>16</sup> The SROs have indicated that the new CE training for Principals is not being designed to address only personnel issues or office supervision. The training will also cover such topics as communications with the public and client accounts.

#### IV. Discussion

The Commission believes that the SRO's proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, national securities associations, and the MSRB, and, in particular, the respective requirements of Section 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) of the Act.<sup>17</sup> Sections 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) require, among other things, that the rules of an exchange, association, or the MSRB, respectively, be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and, in general, protect investors and the public interest. The Commission further believes that the proposed rule changes also are consistent with the respective provisions of Sections 6(c)(3)(B), 15A(g)(3)(A), and 15B(b)(2)(A) of the Act,<sup>18</sup> each of which makes it the responsibility of an exchange, association, or the MSRB to prescribe standards of training, experience, and competence for persons associated with SRO members.

The Commission also believes that the proposed rule change is consistent with the purposes underlying Section 15(b)(7) of the Act, which generally prohibits a registered person from effecting any transaction in, or inducing the purchase or sale of, any security unless such registered person meets the standards of training, competence and other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

The Commission believes that the SRO's proposed rule changes are an appropriate means of maintaining and

reinforcing the initial qualification standards required of a registered person and will significantly enhance the continuing education program by requiring all registered persons to participate in the Regulatory Element throughout their securities industry careers.

#### IV. Effective Date

The SRO's proposed rule changes (File Nos. SR-CBOE-97-68; SR-MSRB-98-02; SR-NASD-98-03; and SR-NYSE-97-33) will become effective July 1, 1998.

#### V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule changes are consistent with the Act and the rules and regulations thereunder applicable to national securities exchanges, national securities associations, and the MSRB.<sup>19</sup>

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule changes (File Nos. SR-CBOE-97-68; SR-MSRB-98-02; SR-NASD-98-03; and SR-NYSE-97-33) be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>21</sup>

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-39721; File No. SR-CHX-98-04]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Examination Requirements for Securities Traders

March 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on February 18, 1998, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission "SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX.<sup>2</sup> The

<sup>19</sup> In addition, in approving these rule proposals, the Commission notes that it has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> 17 CFR 200.3-30(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> On March 3, 1998, the CHX amended its proposal to correct a legal reference in the CHX's

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend Rule 3, "Training and Examination of Registrants," or Article VI, "Restrictions and Requirements," of the CHX's rules by adopting Interpretation and Policy .02, "Persons off the floor," which will establish examination requirements for certain associated persons of CHX members for which the CHX is the Designated Examining Authority ("DEA")<sup>3</sup> Specifically, proposed Interpretation and Policy .02 will require associated persons at applicable firms who execute, make trading decisions with respect to, or otherwise engage in proprietary or agency trading of equities, preferred securities, or convertible debt securities to successfully complete the Uniform Registered Representative Exam, Series 7. Proposed Interpretation and Policy .02 will not apply to any associated person who is subject to the examination requirements of Interpretation and Policy .01, "Floor Member Organizations," of CHX Article VI, Rule 3.<sup>4</sup> To accommodate the proposed change, the CHX also will revise the text of CHX Article VI, Rule 3, to provide that the CHX may require that associated persons of members must successfully complete a training course or examination, or both, in connection with registration.

Copies of the proposed rule change are available at the CHX and at the Commission.

discussion of the statutory basis for the proposed rule change. See Letter from Joseph M. Klauke, Foley & Lardner, to Yvonne Fraticelli, Division of Market Regulation, Commission, dated March 3, 1998 ("Amendment No. 1"). Specifically, Amendment No. 1 replaces a reference to Section 6(c)(3)(8) under the Act with a reference to Section 6(c)(3)(B) under the Act.

<sup>3</sup> The proposal is limited to associated persons of members for which CHX is the DEA because associated persons of members with a DEA other than the CHX already are subject to the examination requirements of the self-regulatory organization which is the DEA for the member firm. According to the CHX, the proposal is designed to close a loophole in examination requirements that exists currently for off-floor associated persons of CHX members for which the CHX is the DEA. Telephone conversation between Patricia Levy, General Counsel, CHX, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on February 25, 1998.

<sup>4</sup> Interpretation and Policy .01 establishes examination requirements for persons on the CHX floor, including floor brokers, market makers, and co-specialists.

<sup>16</sup> See Summit Letter.

<sup>17</sup> 15 U.S.C. §§ 78f(b)(5), 78o-3(b)(6), and 78o-4(b)(2)(C).

<sup>18</sup> 15 U.S.C. §§ 78f(c)(3)(B), 78o-3(g)(3)(A), and 78o-3(g)(3)(A), and 78o-4(b)(2)(A).